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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,109	01/27/2004	Jon E. Kinzenbaw	Kinze 36	2193
7590	11/30/2005		EXAMINER	
James J. Hill Emrich & Dithmar LLC Suite 2080 125 South Wacker Drive Chicago, IL 60606			GREENHUT, CHARLES N	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 11/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/766,109	KINZENBAW ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles N. Greenhut	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ . | 6) <input type="checkbox"/> Other: ____ .  |

Art Unit: 3652

**I. Specification**

1. The abstract is objected to because it contains reference to a computer file, "H:\Word\JJH\Kinze\36 Agricultural Grain Wagon\Patent\nonprovisional app.wpd"

**II. Claim Objections**

1. Claim 7 is objected to because "said front hub" in line 1 should read, -said forward hub-.
2. Claim 9 and 12 are objected to because "flange mounted" in line 4 should read -a flange mounted-.

**III. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. Claims 1 and 11 recite the limitation "the direction of travel" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.
  - 1.2. Claim 2 recites the limitation "the rear of said auger" in line 4. There is insufficient antecedent basis for this limitation in the claim.
  - 1.3. Claim 2 recites the limitation "said auger" in line 4. It is unclear which auger this refers to since there are multiple augers present in the claim.

**IV. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over DAVIS (US 5,468,113 A) in view of HAGEMEYER (US 5,669,531 A) and ALMS (US 4,140,248 A).

1.1. With respect to claim 1, DAVIS teaches a frame (13), hopper (12), ground engaging transport means (Fig. 1), auger (Fig. 9), trough (bottom of 12), forward and rear hubs (Fig. 9), and a clean out pan (134). DAVIS fails to teach the trough and flighting defining a curved recess and the clean out pan for reciprocal movement clearing residue. HAGEMEYER teaches the trough and flighting defining a curved recess (Fig. 2). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the recess of HAGEMEYER to minimize the amount of residue that may collect under the auger. ALMS teaches the clean out pan for reciprocal movement clearing residue (Fig. 2). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the pan of ALMS in order to remove residue from under the auger.

1.2. With respect to claim 2, DAVIS additionally teaches an unload auger (18) a discharge opening (32). DAVIS fails to teach a cover. HAGEMEYER teaches a cover (66). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the cover of HAGEMEYER in order to selectively allow grain to flow through the aperture.

1.3. With respect to claim 3, DAVIS additionally teaches an elongated rod (at 134).

- 1.4. With respect to claim 4, DAVIS additionally teaches an elongated recess (Fig. 1).
  - 1.5. With respect to claim 6, DAVIS additionally teaches the auger mounted at the front and rear. DAVIS fails to teach an unobstructed recess. ALMS teaches an unobstructed recess. It would have been obvious to one of ordinary skill in the art to modify DAVIS with the recess of ALMS to allow access to the residue for cleaning.
  - 1.6. With respect to claim 7, DAVIS additionally teaches a drive member having a plurality of dowels (Fig. 9), and a plate defining bores (166). DAVIS fails to teach a tube carrying the flighting. HAGEMEYER teaches a tube (52) carrying the flighting. It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tube of HAGEMEYER in order to reduce the weight of the auger.
  - 1.7. With respect to claim 8, DAVIS additionally teaches a removable panel (30).
2. Claim(s) 5 s/are rejected under 35 U.S.C. 103(a) as being unpatentable over DAVIS in view of HAGEMEYER and ALMS and further in view of GRIESHOP (US 5,340,265 A).
- 2.1. With respect to claim 5, DAVIS fails to teach an upper section pivotally mounted to the lower and a stand. GRIESHOP teaches an upper section pivotally mounted to the lower and a stand (Figs 1-4). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the two piece hinged connection of GRIESHOP in order to minimize the storage spaced required for the apparatus when not in use.
3. Claim(s) 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DAVIS (US 5,468,113 A) in view of HAGEMEYER (US 5,669,531 A) and further in view of PHILLIPS (US 5,765,961 A)

3.1. With respect to claim 9, DAVIS additionally teaches an idler shaft, a flange, and apertured plate (Fig. 9). DAVIS fails to teach the flange having pins received in the apertured plate, tapered shaft and roller bearings. PHILLIPS teaches a flange (56)/(64) having pins (62) received in an aperture plate (56)/(64), a tapered shaft (52)/(30), and forward and rear tapered roller bearings (40)/(42). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the flange having pins received in the apertured plate of PHILLIPS in order to increase the torsional rigidity of the auger. It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tapered shaft of PHILLIPS in order to facilitate alignment and increase the axial load capacity of the auger. It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tapered roller bearings of PHILLIPS in order to reduce the friction on, and increase the radial rigidity of, the auger.

3.2. With respect to claim 10 DAVIS fails to teach forward and rear tapered roller bearings. PHILLIPS teaches forward and rear tapered roller bearings (40)/(42). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tapered roller bearings of PHILLIPS in order to reduce the friction on, and increase the radial rigidity of, the auger.

3.3. With respect to claim 11, DAVIS teaches a frame (13), hopper (12), ground engaging transport means (Fig. 1), trough (bottom of 12), auger having flighting (Fig. 9), forward and rear hubs (Fig. 9), drive member (66), a plurality of drive dowels (Fig. 9), plate (166), and removable panel (30). DAVIS fails to teach the plate defining

bores for receiving the dowels and auger having a tube. HAGEMEYER teaches the auger having a tube (52). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tube of HAGEMEYER in order to reduce the weight of the auger. PHILLIPS teaches the plate defining bores for receiving the dowels (Fig. 3). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the coupling of PHILLIPS in order to increase the torsional rigidity of the auger.

3.4. With respect to claim 12, DAVIS additionally teaches an idler shaft and a flange (Fig. 9). DAVIS fails to teach forward and rear tapered roller bearings, the flange including a plurality of pins received in an apertured plate. PHILLIPS teaches a flange (56)/(64) having pins (62) received in an aperture plate (56)/(64), and forward and rear tapered roller bearings (40)/(42). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the flange having pins received in the apertured plate of PHILLIPS in order to increase the torsional rigidity of the auger. It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tapered roller bearings of PHILLIPS in order to reduce the friction on, and increase the radial rigidity of, the auger.

3.5. With respect to claim 13, DAVIS fails to teach forward and rear tapered roller bearings. PHILLIPS teaches forward and rear tapered roller bearings (40)/(42). It would have been obvious to one of ordinary skill in the art to modify DAVIS with the tapered roller bearings of PHILLIPS in order to reduce the friction on, and increase the radial rigidity of, the auger.

## **V. Conclusion**

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



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